

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT NEW YORK

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NICOLAS GOUREAU and STEPHANIE	:	
MENKIN, individually and derivatively on	:	
behalf of GOOBERRY CORP., a New York	:	
Corporation,	:	
	:	
Plaintiff,	:	
	:	Civil Action No. 20-cv-4691-MKV
- against -	:	
	:	
MARCUS LEMONIS, an individual, ML	:	
RETAIL, LLC, a Delaware limited liability	:	ECF Case
company, and MARCUS LEMONIS, LLC, a	:	
Delaware limited liability company, and	:	
MACHETE CORPORATION d/b/a MACHETE	:	
PRODUCTIONS, a California corporation,	:	Oral Argument Requested
	:	
Defendants,	:	
and	:	
	:	
GOOBERRY CORP., a New York corporation,	:	
	:	
Nominal Defendant.	:	
	:	
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**DECLARATION OF KIMBERLY DONNAN IN SUPPORT OF MACHETE
CORPORATION D/B/A MACHETE PRODUCTIONS' MOTION TO DISMISS THE
FIRST AMENDED COMPLAINT, OR, IN THE ALTERNATIVE, TO TRANSFER
VENUE**

1. I am Co-Executive Producer of The Profit. I make this Declaration based on my personal knowledge and am competent to testify to the same.
2. I have been affiliated with Machete Corporation d/b/a Machete Productions ("Machete") since 2012 and I am familiar with their business.
3. Machete is a production company that is engaged exclusively in the business of developing and producing critically acclaimed content.
4. Machete did not create or develop The Profit. Rather, CNBC retained Machete for the second season of The Profit to produce the show.

5. In order to appear on The Profit, each and every Plaintiff signed substantial release agreements that included, among other clauses, mandatory mediation and arbitration clauses; a choice-of-venue clause for California; full releases of claims against Machete; explicit disclaimers against reliance on Machete; and the assumption of all risks related to following Lemonis' advice.

6. Attached hereto as **Exhibit A** is a true and correct copy of Plaintiff Nicolas Goureau's Appearance Release Form, Arbitration Provision and Voluntary Participation Agreement, which he entered into on June 3, 2014.

7. Attached hereto as **Exhibit B** is a true and correct copy of Plaintiff Stephanie Menkin's Appearance Release Form, Arbitration Provision and Voluntary Participation Agreement, which she entered into on June 2, 2014.

8. Attached hereto as **Exhibit C** is a true and correct copy of Plaintiff Gooberry Corporation's Reality Participant Agreement, Release & Arbitration Provisions – Business, which it entered into on June 3, 2014.

9. On May 14, 2014, I sent Plaintiffs release agreements to sign in order to appear on the show via email. Attached hereto as **Exhibit D** is a true and correct copy of that correspondence.

10. On May 16, 2014, Plaintiffs provided comments and suggested revisions regarding the release agreements via a telephone conversations, the content of which I subsequently confirmed by email. Attached hereto as **Exhibit E** is a true and correct copy of that email correspondence.

11. On June 2, 2014, I sent Plaintiffs revised redline and clean drafts of the release agreements via email, which incorporated the revisions CNBC was willing address. Shortly thereafter, Plaintiffs signed and returned the executed release agreements. Attached hereto as **Exhibit F** is a true and correct copy of that correspondence.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

Executed this 30th day of October 2020.

A handwritten signature in blue ink, appearing to read 'Kimberly Donnan', written over a horizontal line.

Kimberly Donnan